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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1080. 698

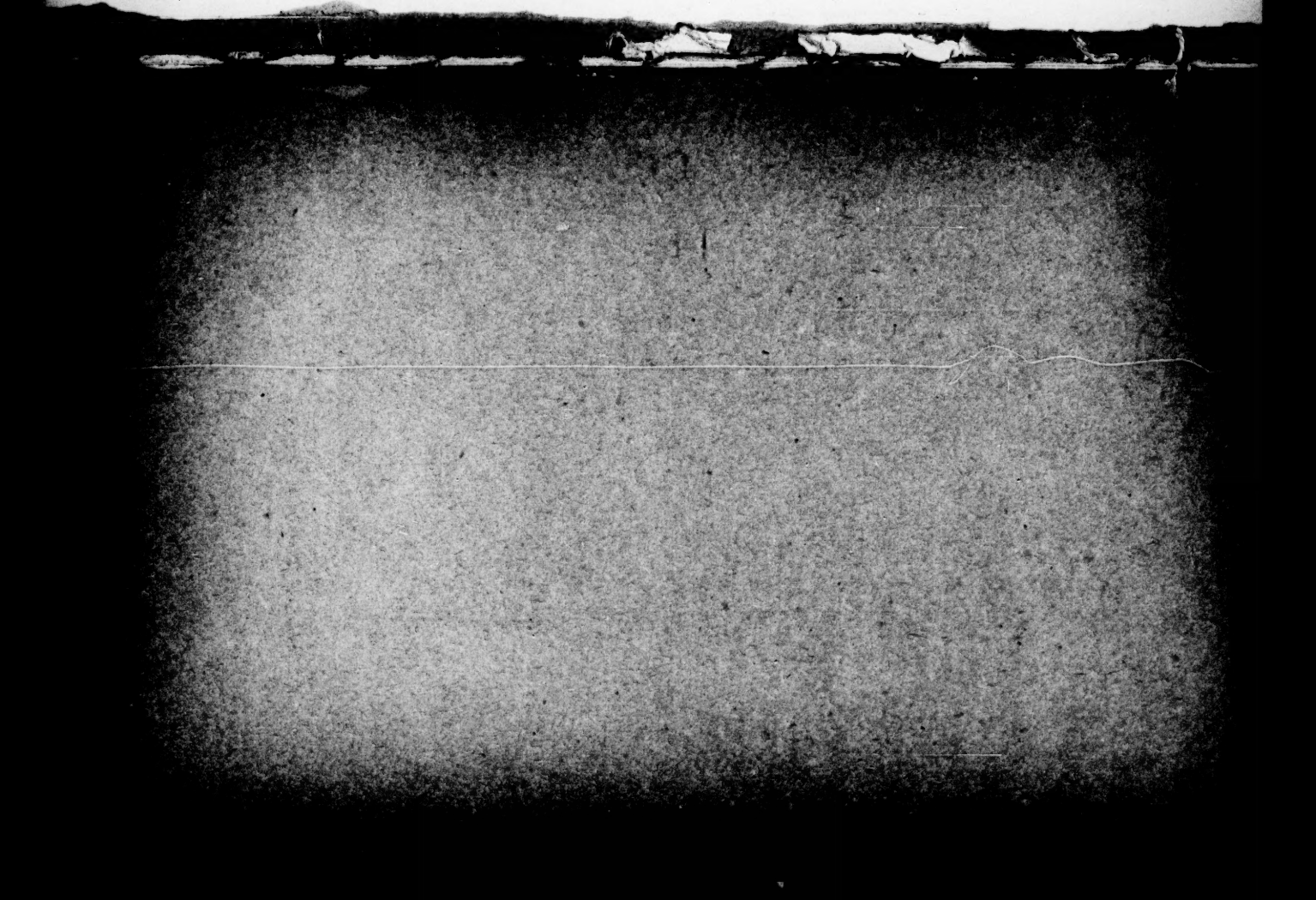
HOWARD D. POTTS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 6, 1886.



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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Petition.*

In the Court of Claims.

HOWARD D. POTTS
vs.
THE UNITED STATES. } No. 14962.

Claimant'- petition.

To the honorable the judges of the Court of Claims:

The petition of Howard D. Potts respectfully shows to your honors:

1. That he is a citizen of the United States and an officer of the navy thereof, to wit, an assistant engineer.

2. That he entered the navy November 16th, 1861; was appointed assistant engineer August 25th, 1863, and was placed on the retired list as assistant engineer October 26th, 1874, on account of
2 physical disability, under sections 1448 *et seq.* of the Revised Statutes.

3. That such disability arose from an incident of the service, but that the retiring board before which petitioner was ordered, disregarding the evidence before it and the report of the medical members of the board, reported that the disability did not originate in the line of duty, and that in consequence of such report petitioner was retired on furlough pay.

4. That thereafter petitioner appealed to the Secretary of the Navy for a reconsideration of his case, and that upon a full consideration of his said appeal, and the evidence in support thereof, petitioner was transferred by the President, by and with the
3 advice and consent of the Senate, from the furlough to the retired pay list, March 20th, 1877.

Your petitioner claims that under sections 1453, 1556, 1588, and 1594, Revised Statutes, he was entitled after such transfer to be paid at the rate of $1,425 per annum, but that such pay has been wholly denied and refused him, and that he has only been paid at the rate of $950 per annum since the date of said transfer. Wherefore your petitioner prays judgment against the United States for the difference between said rates of pay at $475 per annum from July 1st, 1879, to the date of filing this petition, viz., in the sum of $3,245.67.

Your petitioner says that he is the sole owner of this claim, and has never assigned the same or any portion thereof; that he is
4 justly entitled to the amount herein claimed after allowing all just credits and offsets; that he has at all times borne true allegiance to the Government of the United States, and has never in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government, and that he has appointed John Paul Jones, of Washington, D. C., his attorney for the prosecution of this claim.

HOWARD D. POTTS.

Howard D. Potts, being first duly sworn according to law, on oath says that he is the petitioner named in the foregoing petition; that he signed the same, and that the matters and things therein stated are true to the best of his knowledge and belief.

HOWARD D. POTTS.

Subscribed and sworn to before me this 5 day of May, A. D. 1886.

EUGENE SNYDER,
Notary Public.

[Endorsed:] No. 14962. Howard D. Potts *vs.* The United States. Original petition. Filed May 12, 1886. J. R. John Paul Jones, att'y for cl'm't.

5 *Findings of Fact.*

In the Court of Claims.

HOWARD D. POTTS
vs.
THE UNITED STATES. } No. 14962.

Finding of fact.

This case having been heard by the Court of Claims, the Court upon the evidence finds the facts to be as follows:

1. The claimant is an asst' engineer of the navy on the retired list.

2. Oct. 9, 1874, claimant was examined by the medical officers of a naval retiring board, who made the following report:

"NAVAL RETIRING BOARD,
"WASHINGTON, D. C., *9th October*, 1874.

"SIR: We have examined Howard D. Potts, assistant engineer United States Navy, and find him affected with chronic
6 bronchitis, deposits in the inferior portion of the left lung, and asthma.

"The records of the Bureau of Medicine and Surgery shows that Mr. Potts suffered a severe attack of pneumonia, involving both lungs, which originated in the line of duty while attached to the U. S. S. Dacotah, in November, 1867. In March, 1868, on the same ship, he experienced an attack of acute bronchitis, of a suffocative character, excited by "climatic influences." The patient states that he has had difficulty of breathing ever since his attack of pneumonia, and the medical history of his case proves him to have been the subject of treatment for asthma several times while aboard the U. S. S. Monocacy during the years 1870, '71, and '72. Since his detachment from the Monocacy, in 1872, the paroxysms of diffi-
7 cult breathing have increased in frequency and severity.

"His present condition is such as to render him unfit for

duty, and, in our opinion, he is permanently incapacitated to perform the duties appropriate to his commission.

"Respectfully, &c., &c., &c.,

"GEORGE PECK,
"*Medical Inspector, &c., &c.*
"DAVID KINDLEBERGER,
"*Surgeon, &c.*

"Commodore J. W. A. Nicholson, U. S. Navy, president naval retiring board."

3. Oct. 10, 1874, the retiring board made the following report:

"The medical members of the board, having completed the physical examination of Assistant Engineer Potts, submitted report in the case, which was read, and is hereto appended and marked C.

8 "The board, after mature deliberation, find that Assistant Engineer H. D. Potts, U. S. Navy, is incapacitated from active service, and, in their judgment, the incapacity did not originate in the line of duty.

"J. W. A. NICHOLSON,
"*Commodore and Pres't.*
"C. H. B. CALDWELL,
"*Commodore.*
"JOHN C. FEBIGER,
"*Commodore.*
"GEORGE PECK,
"*Medical Inspector.*
"DAVID KINDLEBERGER,
"*Surgeon.*"

4. In the above report the president concurred, and directed claimant's retirement on furlough pay.

5. Claimant was nominated March 15, 1877, and confirmed by the Senate March 17, 1877, for transfer from the furlough to the retired pay list, under section 1594 of the Revised Statutes.

9 6. Since his transfer claimant has been paid at the rate of $950 per annum.

And upon the foregoing findings of fact the Court decides as *as* conclusion of law:

Conclusions of Law.

This is a claim of a naval officer on the retired list for three-quarters sea pay under the first clause of sec. 1588, Revised Statutes, instead of half pay under the second clause of said section by reason of a transfer from the furlough to the retired pay list in accordance with section 1594, R. S. The points are exactly similar to those in the case of Jabez Burchard, decided adversely to the claimant in 19 C. Cls. Rep., 137. In accordance with the views expressed in the opinion in that case, the Court decides that the present claimant is not entitled to recover and dismisses the petition.

[Endorsed:] 14962. Court of Claims. Potts *vs.* The U. S. Findings of fact. Filed June 7, 1886. A. H.

10 *Judgment.*

Court of Claims.

HOWARD D. POTTS
v.
THE UNITED STATES. } No. 14962.

The Court filed findings of fact and conclusions of law, and it was ordered that the claimant's petition be dimissed.

The above judgment was entered of record June 7th, 1886.

11 *Appeal.*

In the Court of Claims.

HOWARD D. POTTS
vs.
THE UNITED STATES. } No. 14962.

Comes now the claimant, by John Paul Jones, his attorney, and prays the Court for the allowance of an appeal from the judgment of the Court dismissing his petition in the above-entitled cause.

JOHN PAUL JONES,
Att'y for Cl'm't.

Allowed June 19, 1886.

WILLIAM A. RICHARDSON,
Chief Justice.

[Endorsed:] Court of Claims. 14962. Howard D. Potts *vs.* The United States. Motion of claimant for allowance of appeal. Filed June 19, 1886. A. H. John Paul Jones, att'y for cl'm't.

12 In the Court of Claims.

HOWARD D. POTTS
vs.
THE UNITED STATES. } No. 14692.

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the Court and the conclusion of law thereon, and of the judgment of the Court entered June 7th, 1886.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington this 22nd day of June, 1886.

[Seal Court of Claims.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

Endorsed on cover: Court of Claims. No. 1080. Howard D. Potts, appellant, *vs.* The United States. Filed October 6, 1886.